APPENDIX

K.S.A. 21-4504. Conviction of second and subsequent felonies; exceptions. (b) If a defendant is convicted of a felony a third or subsequent time, the trial judge shall sentence the defendant as follows, upon motion of the prosecuting attorney:

(1) The court shall fix a minimum sentence of not less than the greatest nor more than three times the greatest minimum sentence authorized by K.S.A. 21-4501 and amendments thereto, for the crime for which the defendant is convicted; and

(2) the court may fix a maximum sentence of not less than the least nor more than three times the greatest maximum sentence provided by K.S.A. 21-4501 and amendments thereto, for the crime. . . .

History: L. 1969, ch. 180, § 21-4504; L. 1970, ch. 124, § 10; L. 1973, ch. 141, § 1; L. 1978, ch. 120, § 4; L. 1982, ch. 137, § 2; July 1.

K.S.A. 21-4601. Construction. This article shall be liberally construed to the end that persons convicted of crime shall be dealt with in accordance with their individual characteristics, circumstances, needs, and potentialities as revealed by case studies; that dangerous offenders shall be correctly treated in custody for long terms as needed; and that other offenders shall be dealt with by probation, suspended sentence, fine or assignment to a community correctional services program whenever such disposition appears practicable and not detrimental to the needs of public safety and the welfare of the offender, or shall be committed for at least a minimum term within the limits provided by law.

History: L. 1969, ch. 180, 21-4601; L. 1986, ch. 123, 4; July 1.

K.S.A. 21-4716. Imposition of presumptive sentence; departure sentencing; finding substantial and compelling

reasons for departure; mitigating or aggravating factor considered in determining if reasons exist; reasons stated on record. (a) The sentencing judge shall impose the presumptive sentence provided by the sentencing guidelines for crimes committed on or after July 1, 1993, unless the judge finds substantial and compelling reasons to impose a departure. If the sentencing judge departs from the presumptive sentence, the judge shall state on the record at the time of sentencing the substantial and compelling reasons for the departure.

(b)(1) Subject to the provisions of subsection (b)(3), the following nonexclusive list of mitigating factors may be considered in determining whether substantial and compelling reasons for a departure exist:

(G) The defendant's current crime of conviction is a crime of extreme sexual violence and the defendant is a predatory sex offender. As used in this subsection:

(I) "Crime of extreme sexual violence" is a felony limited to the following:

(a) A crime involving a nonconsensual act of sexual intercourse or sodomy with any person;

(b) a crime involving an act of sexual intercourse, sodomy or lewd fondling and touching with any child who is 14 or more years, of age but less than 16 years of age and with whom a relationship has been established or promoted for the primary purpose of victimization; or

(c) a crime involving an act of sexual intercourse, sodomy or lewd fondling and touching with any child who is less than 14 years of age.

(ii) "Predatory sex offender" is an offender who has been convicted of a crime of extreme sexual violence as the current crime of conviction and who:

(a) Has one or more prior convictions of any crimes of extreme sexual violence. Any prior conviction used to establish the defendant as a predatory sex offender pur-

suant to this subsection shall also be counted in determining the criminal history category; or

(b) suffers from a mental condition or personality disorder which makes the offender likely to engage in additional acts constituting crimes of extreme sexual violence.

(iii) "Mental condition or personality disorder" means an emotional, mental or physical illness, disease, abnormality, disorder, pathology or condition which motivates the person, affects the predisposition or desires of the person, or interferes with the capacity of the person to control impulses to commit crimes of extreme sexual violence.

In determining whether aggravating factors exist as provided in this section, the court shall review the victim impact statement.

History: L. 1992, ch. 239, 16; L. 1993, ch. 291, 263; Amended, L. 1994, ch. 341, 2; July 1.

K.S.A. 22-3220. [Effective January 1, 1996.] [Mental disease or defect; availability as defense.] It is a defense

It is a defense to a prosecution under any statute that the defendant, as a result of mental disease or defect, lacked the mental state required as an element of the offense charged. Mental disease or defect is not otherwise a defense. The provisions of this section shall be in force and take effect on and after January 1, 1996.

History. L. 1995, ch. 251, 20; January 1, 1996.

K.S.A. 22-3221. [Effective January 1, 1996.] [Same; submission of special question to jury upon return of not guilty verdict of charged offense.]

In any case in which the defense has offered substantial evidence of a mental disease or defect excluding the mental state required as an element of the offense charged, and the jury returns a verdict of "not guilty," the jury shall also answer a special question in the following form:

"Do you find the defendant not guilty solely because the defendant, at the time of the alleged crime, was suffering from a mental disease or defect which rendered the defendant incapable of possessing the required criminal intent?" The provisions of this section shall be in force and take effect on and after January 1, 1996.

History. L. 1995, ch. 251, 21; January 1, 1996.

K.S.A. 22-3429. Deferring sentence pending mental examination. After conviction and prior to sentence and as part of the presentence investigation authorized by K.S.A. 21-4604, the trial judge may order the defendant committed to a state hospital or any suitable local mental health facility for mental examination, evaluation and report. If adequate private facilities are available and if the defendant is willing to assume the expense thereof such commitment may be to a private hospital. A report of the examination and evaluation shall be furnished to the judge and shall be made available to the prosecuting attorney and counsel for the defendant. A defendant may not be detained for more than 120 days under a commitment made under this section.

History: L. 1970, ch. 129, 22-3429; July 1.

K.S.A. 22-3430. Commitment to certain state institutions, when; costs; order of commitment; appeal. If the report of the examination authorized by the preceding section shows that the defendant is in need of psychiatric are and treatment and that such treatment may materially aid in his rehabilitation and that the defendant and society is not likely to be endangered by permitting the defendant to receive such psychiatric care and treatment, in lieu of confinement or imprisonment, the trial judge shall have power to commit such defendant to any state or county institution provided for the reception, care, treatment and maintenance of mentally ill persons. The court may direct that the defendant be detained in such institution until

further order of the court or until the defendant is discharged under K.S.A. 22-3431. No period of detention under this section shall exceed the maximum term provided by law for the crime of which the defendant has been convicted. The trial judge shall, at the time of such commitment make an order imposing liability upon the defendant, or such person or persons responsible for the support of the defendant, or upon the county or the state, as may be proper in such case, for the cost of admission, care and discharge of such defendant.

The defendant may appeal from any order of commitment made pursuant to this section in the same manner and with like effect as if sentence to a jail, or to the custody of the director of penal institutions had been imposed in this case.

History: L. 1970, ch. 129, § 22-3430; July 1.

K.S.A. 22-3431. Disposition upon completion of treatment. Whenever it appears to the chief medical officer of the institution to which a person has been committed under K.S.A. 22-3430 and amendments thereto, that such person is not dangerous to self or others and that such person will not be improved by further detention in such institution, such person shall be returned to the court where convicted and shall be sentenced, committed, granted probation, assigned to a community correctional services program or discharged as the court deems best under the circumstance. The time spent in a state or county institution pursuant to a commitment under K.S.A. 22-3430 and amendments thereto shall be credited against any sentence, confinement or imprisonment imposed on the defendant.

History: L. 1970, ch. 129, 22-3431; L. 1971, ch. 114, 8; L. 1986, ch. 123, 22; July 1.

K.S.A. 22-3717. Parole eligibility; release, when; hearings; rules and regulations; conditions of parole: (a) Ex-

cept as otherwise provided by this section, an inmate, including an inmate sentence pursuant to K.S.A. 21-4618 and amendments thereto, shall be eligible for parole after serving the entire minimum sentence imposed by the court, less good time credits. . .

History: L. 1970, ch. 129, 22-3717; L. 1972, ch. 317, 90; L. 1973, ch. 339, 88; L. 1974, ch. 403, 10; L. 1975, ch. 203, 1; L. 1976, ch. 168; 2; L. 1978, ch. 120, 13; L. 1979, ch. 94, 2; L. 1981, ch. 156, 1; L. 1982, ch. 137; 3; L. 1982, ch. 150, 2; L. 1983, ch. 116, 1; L. 1984, ch. 131, 1; L. 1985, ch. 111, 2; L. 1986, ch. 128, 3; L. 1986, ch. 123, 25; L. 1986, ch. 136, 3; L. 1987, ch. 118, 1; L. 1988, ch. 115, 1; May 19.

K.S.A. 22-3718. Conditional release. An inmate who has served the inmate's maximum term or terms, less such work and good behavior credits as having been earned, shall, upon release, be subject to such written rules and conditions as the Kansas parole board may impose, until the expiration of the maximum term or terms for which the inmate was sentenced or until the inmate is otherwise discharged. . . .

History: L. 1970, ch. 129, 22-3718; L. 1972, ch. 317, 91; L. 1986, ch. 128, 4; July 1.

K.S.A. 59-2901. Name and citation of act. The provisions of K.S.A. 59-2901 through 59-2941 and amendments thereto and K.S.A. 1993 Supp. 59-2943 and 59-2944 and amendments thereto shall be known and may be cited as the treatment act for mentally ill persons.

History: L. 1965, ch. 348, 1; 1976, ch. 243, 1; L. 1986, ch. 211, 1; L. 1990, ch. 92, 16; Jan. 1, 1991.

K.S.A. 59-2902. Definitions. When used in the treatment act for mentally ill persons:

(a) "Conditional release" means release of a patient who has not been discharged but who is permitted by the

head of the treatment facility to live apart from the treatment facility pursuant to K.S.A. 59-2924 and amendments thereto.

(b) "Discharge" means the final and complete release from treatment, by either an order of a court pursuant to K.S.A. 59-2923 and amendments thereto or a treatment facility.

(c) "Head of the treatment facility" means the administrative director of a treatment facility or such person's designee.

(d) "Involuntary patient" means a mentally ill person who is receiving treatment under order of a court of competent jurisdiction.

(e) "Lacks capacity to make an informed decision concerning treatment" means that the person, by reason of the person's mental disorder or condition, is unable, despite conscientious efforts at explanation, to understand basically the nature and effect of hospitalization or treatment or is unable to engage in a rational decision-making process regarding hospitalization or treatment, as evidenced by inability to weigh the possible risks and benefits.

(f) "Law enforcement officer" means any sheriff, regularly employed deputy sheriff, state highway patrol officer, regularly employed city police officer, law enforcement officer of any county law enforcement department or regularly employed police officer of any university, community college or Haskell institute, if such police officer of a university, community college or Haskell institute has completed not less than 320 hours of law enforcement instruction at the law enforcement training center or in a training program approved under K.S.A. 74-5604a and amendments thereto.

(g) "Likely to cause harm to self or others" means that the person:

(1) Is likely, in the reasonably foreseeable future, to cause substantial physical injury or physical abuse to self or others or substantial damage to another's property, as evidenced by behavior causing, attempting or threatening such injury, abuse or damage; or

(2) Is substantially unable, except for reason of indigency, to provide for any of the person's basic needs, such as food, clothing, shelter, health or safety causing a substantial deterioration of the person's ability to function on the person's own.

(h) "Mentally ill person" means any person who:

(1) Is suffering from a severe mental disorder to the extent that such person is in need of treatment;

(2) lacks capacity to make an informed decision concerning treatment; and

(3) is likely to cause harm to self or others.

No person who is being treated by prayer in the practice of the religion of any church which teaches reliance on spiritual means alone through prayer for healing shall be determined to be a mentally ill person unless substantial evidence is produced upon which the district court finds that the proposed patient is likely, in the reasonably foreseeable future, to cause substantial physical injury or physical abuse to self or others or substantial damage to another's property, as evidence by behavior causing, attempting or threatening such injury, abuse or damage.

(I) "Patient" means a person who is a voluntary patient, a proposed patient or an involuntary patient.

(j) "Physician" means a person licensed to practice medicine and surgery as provided by the Kansas healing arts act or a person who is employed by a Kansas state hospital or by an agency of the United States and who is authorized by either government to practice medicine and surgery.

(k) "Proposed patient" means a person for whom an application pursuant to K.S.A. 59-2913 and amendments thereto has been filed.

(l) "Psychologist" means a licensed psychologist, as defined by K.S.A. 74-5302 and amendments thereto.

(m) "Restraints" means the application of any devices, other than human force alone, to any parts of the body of the patient for the purpose of preventing the patient from causing injury to self or others.

(n) "Seclusion" means the placement of a patient, alone, in a locked room, where the patient's freedom to leave is restricted and where the patient is not under continuous observation.

(o) "Severe mental disorder" means a clinically significant behavioral or psychological syndrome or pattern associated with either a painful symptom or serious impairment in one or more important areas of functioning and involving substantial behavioral, psychologic or biologic dysfunction. "Severe mental disorder" does not include a condition which is caused by the use of chemical substances or for which the primary diagnosis is antisocial personality.

(p) "Treatment" means any service intended to promote the mental health of the patient and rendered by a qualified professional licensed or certified by the state to provide such service as an independent practitioner or under the supervision of such practitioner.

(q) "Treatment facility" means any mental health center or clinic, psychiatric unit of a medical care facility, psychologist, physician or other institution or individual authorized or licensed by law to provide either inpatient or outpatient treatment to any patient.

(r) "Voluntary patient" means a person who is receiving treatment at a treatment facility other than by order of any court.

(s) The terms defined in K.S.A. 59-3002 and amendments thereto shall have the meanings provided by that section.

(t) "Mental health center" means any community mental health center organized pursuant to the provisions of K.S.A. 19-4001 through 19-4015, and amendments thereto, or mental health clinic organized pursuant to the provisions of K.S.A. 65-211 through 65-215, and amendments thereto, and licensed in accordance with the provisions of K.S.A. 75-3307b and amendments thereto.

(u) "Participating mental health center" means a mental health center which has entered into a contract with the secretary of social and rehabilitation services to provide screening, treatment and evaluation, court ordered evaluation and other treatment services pursuant to the treatment act for mentally ill persons, in keeping with the phased concept of the mental health reform act.

(v) "State phychiatric hospital" means Larned state hospital, Osawatomie state hospital, Rainbow mental health facility and Topeka state hospital.

(w) "Qualified mental health professional" means (1) a physician or psychologist who is employed by a participating mental health center or who is providing services as a physician or psychologist, respectively, under a contract with a participating mental health center, or (2) a registered masters level psychologist or a licensed specialist social worker or licensed master social worker or a registered nurse who has a specialty in psychiatric nursing who is employed by a participating mental health center and who is acting under the direction of a physician.

(x) "Registered masters level psychologist" means a person registered as a registered masters level psychologist by the behavioral sciences regulatory board under K.S.A. 74-5361 through 74-5373 and amendments thereto.

(y) "Licensed specialist social worker" means a person licensed in a social work practice specialty by the behavioral sciences regulatory board under K.S.A. 65-6301 through 65-6318 and amendments thereto.

(z) "Licensed master social worker" means a person licensed as a master social worker by the behavioral sciences regulatory board under K.S.A. 65-6301 through 65-6318 and amendments thereto.

(aa) "Secretary" means the secretary of social and rehabilitation services.

(bb) "Osawatomie state hospital catchment area" means, except as otherwise defined by rules and regulations of the secretary adopted pursuant to K.S.A. 39-1613 and amendments thereto, the area composed of the following counties: Allen, Anderson, Atchison, Bourbon, Butler, Chautauqua, Cherokee, Cowley, Crawford, Elk, Franklin, Jefferson, Johnson, Labette, Leavenworth, Linn, Miami, Montgomery, Neosho, Wilson, Woodson and Wyandotte.

(cc) "Topeka state hospital catchment area" means, except as otherwise defined by rules and regulations of the secretary adopted pursuant to K.S.A. 39-1613 and amendments thereto, the area composed of the following counties: Brown, Chase, Clay, Cloud, Coffey, Dickinson, Doniphan, Douglas, Ellsworth, Geary, Greenwood, Harvey, Jackson, Jewell, Lincoln, Lyon, Marion, Marshall, McPherson, Mitchell, Morris, Nemaha, Osage, Ottawa, Pottawatomie, Republic, Riley, Saline, Sedgwick, Shawnee, Wabaunsee and Washington.

(dd) "Larned state hospital catchment area" means, except as otherwise defined by rules and regulations of the secretary adopted pursuant to K.S.A. 39-1613 and amendments thereto, the area composed of the following counties: Barber, Barton, Cheyenne, Clark, Comanche, Decatur, Edwards, Ellis, Finney, Ford, Gove, Graham, Grant, Gray, Greeley, Hamilton, Harper, Haskell, Hodge-

man, Kearny, Kingman, Kiowa, Lane, Logan, Meade, Morton, Ness, Norton, Osborne, Pawnee, Phillips, Pratt, Rawlins, Reno, Rice, Rooks, Rush, Russell, Scott, Seward, Sheridan, Sherman, Smith, Stafford, Stanton, Stevens, Sumner, Thomas, Trego, Wallace and Wichita.

(ee) "Catchment area" means the Osawatomie state hospital catchment area, the Topeka state hospital catchment area or the Larnad state hospital catchment area.

(ff) "Direction" means monitoring and oversight including regular, periodic evaluation of services.

History: L. 1965, ch. 348, 2; L. 1976, ch. 243, 2; L. 1976, ch. 242, 69; L. 1977, ch. 199, 1; L. 1978, ch. 223, 1; L. 1982, ch. 238, 1; L. 1986, ch. 211, 2; L. 1988, ch. 202, 1; L. 1990, ch. 92, 17; L. 1993, ch. 225, 3; April 22.

K.S.A. 59-2919. Order for admission to state psychiatric hospital. All orders of referral to or treatment in a state psychiatric hospital shall be made on the form prescribed by the secretary of social and rehabilitation services. Admission shall be to the state psychiatric hospital previously designated by the secretary of social and rehabilitation services to accept persons from the area of the court's jurisdiction and, if requested by the head of the treatment facility, at a time specified by the head of the treatment facility, which time shall be not more than 15 days after the date of the order. Notice of the order shall be given immediately to the designated psychiatric hospital.

History: L. 1965, ch. 348, 19; L. 1976, 243, 22; L. 1986, ch. 211, 16; July 1.

K.S.A. 59-2924. Transfer; discharge; conditional release. (a) The secretary of social and rehabilitation services or the secretary's designee may transfer any patient from any state psychiatric hospital under the secretary's control to any other state psychiatric hospital whenever the secretary or the secretary's designee considers it to be in the

best interests of the patient. Except in the case of an emergency, the patient's next of kin or guardian, if one has been appointed, shall be notified of the transfer, and notice shall be sent to the committing court not less than 14 days before the proposed transfer. The notice shall state the location to which the transfer is proposed and state that, upon request of the next of kin or guardian, an opportunity for a hearing on the proposed transfer will be provided by the secretary of social and rehabilitation services prior to such transfer.

(b) The secretary of social and rehabilitation services or the designee of the secretary may transfer any involuntary patient from any state psychiatric hospital to any state institution for the mentally retarded whenever the secretary of social and rehabilitation services or the designee of the secretary considers it to be in the best interests of the patient. Any patient transferred as provided in this subsection shall remain subject to the same statutory provisions as were applicable at the hospital from which the patient was transferred and in addition thereto shall abide by and be subject to all the rules and regulations of the institution to which the patient has been transferred. Except in the case of an emergency, the patient's next of kin or guardian, if one has been appointed, shall be notified of the transfer, and notice shall be sent to the committing court not less than 14 days before the proposed transfer. The notice shall state the location to which the transfer is proposed and state that, upon request of the next of kin or guardian, an opoprtunity for a hearing on the proposed transfer will be provided by the secretary of social and rehabilitation services prior to such transfer. No involuntary patient shall be transferred from a state psychiatric hospital to a state institution for the mentally retarded unless the superintendent of the receiving institution has found that the patient is mentally retarded and in need of care and training and that placement in the institution is the least restrictive alternative available. Nothing in this subsection shall prevent the secretary of

social and rehabilitation services or the designee of the secretary from allowing a person to be admitted as a voluntary resident to a state institution for the mentally retarded, or from discharging such person from a state psychiatric hospital.

(c) When any proposed patient or involuntary patient has been ordered to any treatment facility pursuant to K.S.A. 59-2909, 59-2912, 59-2917 or 59-2918, and amendments thereto, the head of the treatment facility shall discharge the patient when the patient is no longer in need of treatment in the facility, except that no patient shall be discharged from a state psychiatric hospital, if there is a participating mental health center serving the area where the patient intends to reside, without receiving recommendations from such participating mental health center. The head of the treatment facility shall review and investigate all applications for involuntary admission and, if appropriate, shall divert patients to less restrictive alternatives before further judicial proceedings occur whenever it is deemed appropriate by the head of the treatment facility. If diversion from involuntary treatment is not appropriate, the head of the treatment facility should be prepared to present evidence at the next hearing scheduled for the patient concerning further need for involuntary treatment.

(d) The head of the treatment facility may release any involuntary patient who has been committed for treatment pursuant to K.S.A. 59-2917 or 59-2918, and amendments thereto, on conditional release when the head of the treatment facility believes that (1) the release is in the best interests of the patient and (2) the patient is not likely to cause harm to self or others as long as the patient continues a plan of treatment in the community. The treatment facility shall formulate a plan of treatment for each patient released on conditional release. The plan of treatment may include any conditions which the head of the treatment facility considers to be in the best interests of the patient or necessary to ensure that the patient is not

likely to cause harm to self or others. The conditions may include a requirement that the patient be supervised by and report to a treatment facility which shall be responsible for ensuring that the patient complies with the conditions. The treatment facility in the community shall inform the head of the treatment facility from which the patient was discharged of any material noncompliance with the treatment plan. The head of the treatment facility from which the patient is released may change the plan or treatment or the conditions specified in the plan whenever the head considers it to be in the best interests of the patient or necessary to ensure that the patient is not likely to cause harm to self or others. If the patient fails to comply with any conditions of the treatment plan, the head of the facility may revoke the release and order the patient readmitted to the facility. The head of the treatment facility may authorize and order a law enforcement officer or other person to take into custody and transport the patient to a treatment facility.

Prior to the end of the 120 days on conditional release, and not less often than each 120 days thereafter while a patient is on conditional release, the head of the treatment facility from which the patient is released shall reexamine the facts relating to the treatment of the patient on conditional release.

(e) The head of the treatment facility shall not discharge an involuntary patient from conditional release unless at least seven days' notice of the intention to discharge the patient is given to the patient's guardian, if any, and to any other treatment facility which is involved in the treatment plan for the patient.

(f) Nothing in this section shall be construed to amend or modify or repeal any law relating to the confinement of persons charged with or convicted of a criminal offense.

History: L. 1965, ch. 348, 24; L. 1967, ch. 319, 1; L. 1976, ch. 243, 27; L. 1982, ch. 238, 2; L. 1986, ch. 211, 20; L. 1990, ch. 92, 29; Jan. 1, 1991.

K.S.A. 59-2927a. Administration of medications and other treatments. (a) Medications and other treatments shall be prescribed, ordered and administered only in conformity with accepted clinical practice. Medication shall be administered only in accordance with the written order of a physician or upon a verbal order noted in the patient's medical records and subsequently signed by the physician. The attending physician shall review regularly the drug regimen of each patient or proposed patient under the physician's care and shall monitor any symptoms of harmful side effects. Precriptions for psychotropic medications shall be written with a termination date not exceeding 30 days thereafter but may be renewed.

(b) Any patient who is receiving treatment pursuant to the provisions of K.S.A. 59-2909, 59-2912, 59-2917 or 59-2918, and amendments thereto, and who objects to medication prescribed shall have such objection recorded and entered in the patient's medical record. If 'after a full explanation of the reasons for the medication such patient still objects to the medication, it may be administered over the patient's objections. Such objections must be submitted to administrative review by the medical director or psychiatric designee within five days of the objection. In no case shall experimental medication be administered without the patient's consent.

(c) During the course of treatment the responsible physician or psychologist or such person's designee shall consult with the patient, or the patient's guardian, and give consideration to the views the patient or guardian expresses concerning treatment and any alternatives.

(d) Consent for medical or surgical treatments not intended primarily to treat a patient's mental disorder shall be obtained in accordance with applicable law.

History: L. 1986, ch. 211, 26; July 1.

K.S.A. 59-2928. Restraints and seclusions. (a) Restraints or seclusion shall not be applied to a patient unless it is determined by the head of the treatment facility or a physician or psychologist to be required to prevent substantial bodily injury to such patient or others. The extent of the restraint or seclusion applied to the patient shall be the least restrictive measure necessary to prevent injury to the patient or others, and the use of restraint or seclusion in a treatment facility other than a licensed adult care home shall not exceed three hours without medical reevaluation, except that such medical reevaluation shall not be required, unless necessary, between the hours of 12:00 midnight and 8:00 a.m. Reevaluation of the use of restraint or seclusion in a treatment facility which is a licensed adult care home shall be made at a frequency specified by the treating physician or psychologist. When restraints or seclusion are applied, there shall be monitoring of the patient's condition at a frequency determined by the treating physician or psychologist, which shall be no less than once per hour. The head of the treatment facility or a physician or phychologist shall sign a statement explaining the treatment necessity for the use of any restraint and seclusion and shall make such statement a part of the permanent treatment record of such patient.

(b) The provisions of subsection (a) shall not prevent, for a period not exceeding two hours without review and approval thereof by the head of the treatment facility or a physician or psychologist:

(1) Staff at the state security hospital from confining patients in their rooms when it is considered necessary for security or proper institutional management;

(2) the use of such restraints as necessary for a patient who is likely to cause physical injury to self or others without the use of such restraints; or

(3) the use of restraints when needed primarily for examination or treatment or to insure the healing process.

History: L. 1965, ch. 348, 28; L. 1976, ch. 243, 31; L. 1986, ch. 211, 22; L. 1988, ch. 203, 1; April 21.

K.S.A. 59-2929. Rights of patients. (a) Every patient being treated in any treatment facility, in addition to all other rights preserved by the provisions of this act, shall have the following rights:

(1) To wear the patient's own clothes, keep and use the patient's own personal possessions including toilet articles and keep and be allowed to spend the patient's own money;

(2) to communicate by telephone, both to make and receive confidential calls, and by letter, both to mail and receive unopened correspondence, except that if the head of the treatment facility should deny a patient's right to mail or receive unopened correspondence under the provisions of subsection (b), such correspondence shall be opened and examined in the presence of the patient;

(3) to conjugal visits if facilities are available for such visits;

(4) to receive visitors each day;

(5) to refuse involuntary labor and to be paid for any work performed other than the housekeeping of the patient's own bedroom and bathroom subject to the provisions of K.S.A. 1993 Supp. 59-2943;

(6) not to be subject to such procedures as psychosurgery, electroshock therapy, experimental medication, aversion therapy or hazardous treatment procedures without the written consent of the patient and the written consent of a parent, guardian or other person in loco parentis, if such patient has a living parent or a guardian or other person in loco parentis;

(7) to have explained, the nature of all medications prescribed, the reason for the prescription and the most common side effects and, if requested, the nature of any other treatments ordered;

(8) to communicate by letter with the secretary of social and rehabilitation services, the head of the treatment facility and any court, physician, psychologist, minister of religion, including Christian Science practitioner or attorney. All such communications shall be forwarded at once to the addressee without examination and communications from such persons shall be delivered to the patient without examination;

(9) to be visited by the patient's physician, psychologist, minister of religion, including Christian Science practitioner or attorney at any time; and

(10) to be informed orally and in writing of the patient's rights under this section upon admission to a treatment facility.

(b) The head of the treatment facility may, for good cause only, restrict a patient's rights under this section, except that the rights enumerated in subsections (a)(5) through (a)(10), and the right to mail any correspondence which does not violate postal regulations, shall not be restricted by the head of the treatment facility under any circumstances. Each treatment facility shall adopt regulations governing the conduct of all patients being treated in such treatment facility, which regulations shall be consistent with the provisions of this section. A statement explaining the reasons for any restriction of a patient's rights shall be immediately entered on such patient's medical record and copies of such statement shall be available to the patient and the parent, guardian or person in loco parentis, if such patient is less than 18 years of age, and the patient's attorney. In addition, notice of any restriction of a patient's rights shall be communicated to such persons in a timely fashion.

(c) Any person willfully depriving any patient of the rights protected by this section, except for the restriction of such rights in accordance with the provisions of subsection (b), shall be guilty of a class C misdemeanor.

History: L. 1965, ch. 348, 29; L. 1976, ch. 243, 32; L. 1986, ch. 211, 23; July 1.